

AMENDED IN SENATE AUGUST 20, 2010

AMENDED IN SENATE AUGUST 9, 2010

AMENDED IN SENATE JUNE 23, 2010

AMENDED IN SENATE JUNE 26, 2009

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY APRIL 29, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 231

Introduced by Assembly Member Huber

February 5, 2009

An act to amend Section 21094 of the Public Resources Code, relating to the environment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 231, as amended, Huber. Environment: California Environmental Quality Act: overriding consideration.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. The CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that

the project, as revised, would have a significant effect on the environment. For projects whose environmental impacts can not be mitigated to less than significance, existing law authorizes a lead agency to find that specified overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. If an EIR has been prepared and certified for a program, plan, policy, or ordinance, a lead agency is required to use a tiered EIR for a later project if the lead agency determines that the later project is consistent with the program, plan, policy, or ordinance, and satisfies other criteria.

This bill would authorize a lead agency, until January 1, 2016, to ~~rely on~~ *incorporate by reference* a finding of overriding consideration made in a prior EIR for a later project if specified conditions are met, including that the lead agency determines that the later project's significant impacts on the environment are not greater than or different from those identified in the prior EIR.

(2) This bill would incorporate additional changes to Section 21094 of the Public Resources Code proposed by this bill and SB 1456, to be operative only if this bill and SB 1456 are both enacted and become effective on or before January 1, 2011, and this bill is enacted last.

~~(2)~~

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21094 of the Public Resources Code is
2 amended to read:
3 21094. (a) (1) If a prior environmental impact report has been
4 prepared and certified for a program, plan, policy, or ordinance,
5 the lead agency for a later project that meets the requirements of
6 this section shall examine significant effects of the later project
7 upon the environment by using a tiered environmental impact
8 report, except that the report on the later project need not examine
9 those effects that the lead agency determines were either (1)
10 mitigated or avoided pursuant to paragraph (1) of subdivision (a)
11 of Section 21081 as a result of the prior environmental impact
12 report, or (2) examined at a sufficient level of detail in the prior

1 environmental impact report to enable those effects to be mitigated
2 or avoided by site-specific revisions, the imposition of conditions,
3 or other means in connection with the approval of the later project.

4 (2) If a prior environmental impact report has been prepared
5 and certified for a program, plan, policy, or ordinance, and the
6 lead agency makes a finding of overriding consideration pursuant
7 to subdivision (b) of Section 21081, the lead agency for a later
8 project that uses a tiered environmental impact report from that
9 program, plan, policy, or ordinance may ~~rely on~~ *incorporate by*
10 *reference* that finding of overriding consideration if all of the
11 following conditions are met:

12 (A) The lead agency determines that the project's significant
13 impacts on the environment are not greater than or different from
14 those identified in the prior environmental impact report.

15 (B) The lead agency incorporates into the later project all the
16 applicable mitigation measures identified by the prior
17 environmental impact report.

18 (C) The prior ~~statement~~ *finding* of overriding considerations
19 was not based on a determination that mitigation measures should
20 be identified and approved in a subsequent environmental review.

21 (D) The prior environmental impact report was certified not
22 more than three years before the date findings are made pursuant
23 to Section 21081 for the later project.

24 ~~(E) Section 21166 does not apply to the prior environmental~~
25 ~~impact report.~~

26 *(E) The lead agency has determined that the mitigation measures*
27 *or alternatives found to be infeasible in the prior environmental*
28 *impact report pursuant to paragraph (3) of subdivision (a) of*
29 *Section 21081 remain infeasible based on the criteria set forth in*
30 *that section.*

31 (3) On and after January 1, 2016, a lead agency ~~may~~ *shall* not
32 take action pursuant to paragraph (2) with regard to ~~relying on a~~
33 ~~incorporating by reference a prior~~ finding of overriding
34 consideration ~~made in a prior environmental impact report~~, and
35 paragraph (2) shall become inoperative on ~~that date~~ *January 1,*
36 *2016.*

37 (b) This section applies only to a later project that the lead
38 agency determines (1) is consistent with the program, plan, policy,
39 or ordinance for which an environmental impact report has been
40 prepared and certified, (2) is consistent with applicable local land

1 use plans and zoning of the city, county, or city and county in
2 which the later project would be located, and (3) is not subject to
3 Section 21166.

4 (c) For purposes of compliance with this section, an initial study
5 shall be prepared to assist the lead agency in making the
6 determinations required by this section. The initial study shall
7 analyze whether the later project may cause significant effects on
8 the environment that were not examined in the prior environmental
9 impact report.

10 (d) All public agencies that propose to carry out or approve the
11 later project may utilize the prior environmental impact report and
12 the environmental impact report on the later project to fulfill the
13 requirements of Section 21081.

14 (e) If tiering is used pursuant to this section, an environmental
15 impact report prepared for a later project shall refer to the prior
16 environmental impact report and state where a copy of the prior
17 environmental impact report may be examined.

18 *SEC. 1.5. Section 21094 of the Public Resources Code is*
19 *amended to read:*

20 21094. (a) ~~Where (1) If~~ a prior environmental impact report
21 has been prepared and certified for a program, plan, policy, or
22 ordinance, the lead agency for a later project that meets the
23 requirements of this section shall examine significant effects of
24 the later project upon the environment by using a tiered
25 environmental impact report, except that the report on the later
26 project ~~need is not required to~~ examine those effects ~~which that~~
27 the lead agency determines were either ~~(1) mitigated~~ of the
28 following:

29 (A) *Mitigated* or avoided pursuant to paragraph (1) of
30 subdivision (a) of Section 21081 as a result of the prior
31 environmental impact report, ~~or (2) examined.~~

32 (B) *Examined* at a sufficient level of detail in the prior
33 environmental impact report to enable those effects to be mitigated
34 or avoided by ~~site-specific~~ *site-specific* revisions, the imposition
35 of conditions, or by other means in connection with the approval
36 of the later project.

37 (2) *If a prior environmental impact report has been prepared*
38 *and certified for a program, plan, policy, or ordinance, and the*
39 *lead agency makes a finding of overriding consideration pursuant*
40 *to subdivision (b) of Section 21081, the lead agency for a later*

1 *project that uses a tiered environmental impact report from that*
2 *program, plan, policy, or ordinance may incorporate by reference*
3 *that finding of overriding consideration if all of the following*
4 *conditions are met:*

5 *(A) The lead agency determines that the project's significant*
6 *impacts on the environment are not greater than or different from*
7 *those identified in the prior environmental impact report.*

8 *(B) The lead agency incorporates into the later project all the*
9 *applicable mitigation measures identified by the prior*
10 *environmental impact report.*

11 *(C) The prior finding of overriding considerations was not based*
12 *on a determination that mitigation measures should be identified*
13 *and approved in a subsequent environmental review.*

14 *(D) The prior environmental impact report was certified not*
15 *more than three years before the date findings are made pursuant*
16 *to Section 21081 for the later project.*

17 *(E) The lead agency has determined that the mitigation measures*
18 *or alternatives found to be infeasible in the prior environmental*
19 *impact report pursuant to paragraph (3) of subdivision (a) of*
20 *Section 21081 remain infeasible based on the criteria set forth in*
21 *that section.*

22 *(3) On and after January 1, 2016, a lead agency shall not take*
23 *action pursuant to paragraph (2) with regard to incorporating by*
24 *reference a prior finding of overriding consideration, and*
25 *paragraph (2) shall become inoperative on January 1, 2016.*

26 *(b) This section applies only to a later project—~~which~~ that the*
27 *lead agency determines—~~(1) is consistent~~ is all of the following:*

28 *(1) Consistent with the program, plan, policy, or ordinance for*
29 *which an environmental impact report has been prepared and*
30 *certified, ~~(2) is consistent.~~*

31 *(2) Consistent with applicable local land use plans and zoning*
32 *of the city, county, or city and county in which the later project*
33 *would be located, ~~and (3) is not.~~*

34 *(3) Not subject to Section 21166.*

35 *(c) For purposes of compliance with this section, an initial study*
36 *shall be prepared to assist the lead agency in making the*
37 *determinations required by this section. The initial study shall*
38 *analyze whether the later project may cause significant effects on*
39 *the environment that were not examined in the prior environmental*
40 *impact report.*

(d) All public agencies—~~which~~ *that* propose to carry out or approve the later project may utilize the prior environmental impact report and the environmental impact report on the later project to fulfill the requirements of Section 21081.

(e) (1) *If a lead agency determines pursuant to this subdivision that a cumulative effect has been adequately addressed in a prior environmental impact report, that cumulative effect is not required to be examined in a later environmental impact report, mitigated negative declaration, or negative declaration for purposes of subparagraph (B) of paragraph (1) of subdivision (a).*

(2) *When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project are cumulatively considerable.*

(3) (A) *For purposes of paragraph (2), if the lead agency determines the incremental effects of the project are significant when viewed in connection with the effects of past, present, and probable future projects, the incremental effects of a project are cumulatively considerable.*

(B) *If the lead agency determines incremental effects of a project are cumulatively considerable, the later environmental impact report, mitigated negative declaration, or negative declaration shall examine those effects.*

(4) *If the lead agency makes one of the following determinations, the cumulative effects of a project are adequately addressed for purposes of paragraph (1):*

(A) *The cumulative effect has been mitigated or avoided as a result of the prior environmental impact report and findings adopted pursuant to paragraph (1) of subdivision (a) of Section 21081 as a result of the prior environmental impact report.*

(B) *The cumulative effect has been examined at a sufficient level of detail in the prior environmental impact report to enable the effect to be mitigated or avoided by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.*

~~(e) When~~

(f) *If tiering is used pursuant to this section, an environmental impact report prepared for a later project shall refer to the prior environmental impact report and state where a copy of the prior environmental impact report may be examined.*

1 (g) *This section shall remain in effect only until January 1, 2016,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2016, deletes or extends that date.*

4 SEC. 2. *Section 1.5 of this bill incorporates amendments to*
5 *Section 21094 of the Public Resources Code proposed by both this*
6 *bill and SB 1456. It shall only become operative if (1) both bills*
7 *are enacted and become effective on or before January 1, 2011,*
8 *(2) each bill amends Section 21094 of the Public Resources Code,*
9 *and (3) this bill is enacted after SB 1456, in which case Section 1*
10 *of this bill shall not become operative.*

11 ~~SEC. 2.~~

12 SEC. 3. This act is an urgency statute necessary for the
13 immediate preservation of the public peace, health, or safety within
14 the meaning of Article IV of the Constitution and shall go into
15 immediate effect. The facts constituting the necessity are:

16 To promote, as soon as possible, the creation of jobs in the state
17 by expediting the environmental review of a project, thereby
18 preserving the public peace, health, and safety, it is necessary for
19 this measure to take effect immediately.